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FURTHER PROCEEDINGS

ON THE

4 TRIAL of JOHN HORNE, Esq;

UPON AN

I N F O R M A T I O N

FILED EX OFFICIO,

By his Majesty's ATTORNEY GENERAL,

FOR A

L I B E L,

IN THE COURT OF KING'S BENCH,

On WEDNESDAY the 19th and MONDAY the 24th of NOVEMBER.

PUBLISHED BY THE DEFENDANT FROM MR. GURNEY'S SHORT-
HAND NOTES.

L O N D O N:

PRINTED FOR G. KEARSLY, N° 46, FLEET-STREET.

[PRICE ONE SHILLING.]

MDCCCLXXVII.

TO THE PROCEEDINGS

ON THE

TRIAL OF JOHN HORNE, ESQ.

UPON AN

INFORMATION

FILED BY OFFICE

By the Master's Attorney General

FOR A

L. I. B. I.

IN THE COURT OF KING'S BENCH

On Wednesday the 10th and Monday the 11th of November

PUBLISHED BY THE DEFENDANT FROM MR. CUNNEY'S SHOP

HAND NOTED

L O N D O N :

PRINTED FOR G. KEARSEY, N. 4, FLEET-STREET.

[PRICE ONE SHILLING.]

MDCCLXXVII

FURTHER PROCEEDINGS
ON THE
TRIAL of JOHN HORNE, Esq;
IN THE COURT OF KING'S BENCH.

THE KING AGAINST JOHN HORNE,

WEDNESDAY, November 19, 1777.

(The Attorney General moved for Judgment against Mr. Horne.)

Lord Mansfield. Is the Defendant here?

Mr. Daniel, the Defendant's Attorney, answered, that he was.

[The Information was read by Order of the Court.]

Mr. HORNE.

MY Lords, with great submission and respect to your Lordships, and in full confidence and security of protection by the laws of my country, I presume to offer to your Lordships that I am not, upon this information, a proper object for the judgment of this Court. And, my Lords, I cannot mention what I have to say in arrest of the judgment which Mr. Attorney General has prayed against me, without first acknowledging the obligations which I have, and the thanks which I owe, to my Prosecutor and to my Judge: for, my Lords, it is to them, and to the arguments which they used in order to obtain a verdict from the Jury, it is to them that I am indebted for that argument which must prevent the judgment; at the same time, my Lords, it is but justice in me to declare, that whatever ill-founded doubts might, at the beginning of the trial, have harboured in my mind concerning any personal enmity, hostility, or prejudice towards me; before the close of the trial they were all entirely effaced: for enmity, my Lords, is not a supine and careless but an active and curious principle, prompting men to neglect nothing which may tend to produce the desired mischief; and your Lordships, I am persuaded, will see reason to believe with me, that so far from any uncommon diligence having been used against me, neither my Prosecutor, nor my Judge, nor my Jury had ever so much as once cast an eye over the information brought against me; for your Lordships will instantly perceive, by looking at the record, that I am not therein charged with any crime.

A

My

My Lords, when first I saw the charge in the information, I thought of it the same which I now offer to your Lordships; and therefore, fearing nothing but the inattention of the Jury, the greater part of my defence consisted of motives pressed upon the Jury for their attention; and when I hoped I had secured that point (the only favour, as I then declared to them, which I had to request) I then proceeded to show that there was not any crime in that which was alledged against me; keeping my eyes always fixed upon that with which alone I had to do, namely, the charge in the information; and I desired the Jury to take the information out of court with them.

But, my Lords, when I heard the reply of Mr. Attorney General, and the address of the Judge to the Jury, I was no longer at a loss to understand how it happened that I could not see in the charge against me that criminal matter which they imagined it to contain: for, my Lords, I then heard, for the first time, that there was an insurrection or rebellion in the colony of Massachusetts's Bay; that certain persons—and those persons denominated King's troops,—were employed by his Majesty and by the government for the purpose of quelling that insurrection or rebellion; that in this their employment and service an engagement ensued between the said rebels or insurgents and the said King's troops so employed;—that in this engagement certain of the said insurgents or rebels were slain by the said King's troops; and that my advertisement and the charge of murder, said to be contained in it, related to the said insurgents or rebels so slain by the said King's troops so employed.

And, my Lords, the judge did very fairly and very plainly and precisely and in express words shew to the Jury, that on these circumstances did depend the whole criminality of the charge against me.

Now, my Lords, though the Jury did, through want of attention, forget to consider that these circumstances were neither proved nor charged; your Lordships, I am sure, who are to look to nothing but to the record itself, your Lordships I am sure will not fail to consider that no indictment or information can be cured or made good by any implication, argument, supposed notoriety, or intendment whatever. Nothing can be assumed or intended against me, but what is expressed in the record itself. If therefore in the whole range of possible occurrences there can any one be imagined in which it would not be criminal to say that the King's troops (no technical term, my Lords, *Troupeaux*,—flocks—companies— even deserters may be comprehended under that term)—if therefore any one possible occurrence can be imagined (and I suppose there are a great many, the Judge who tried me helped me to some, above twenty)—if any one can be imagined, in which it would not be criminal to say that the King's troops have committed murder; then your Lordships cannot, upon this information, proceed to judgment; because the information wants those necessary averments, which cannot by any means be intended: for your Lordships will find, by looking at the record, that in each of the various counts which this information contains, it is simply averred, that I did write and print and publish, and cause and procure to be written and printed and published, to the tenor and effect following.

Your Lordships will therefore be pleased to examine the record; and I have not the smallest doubt that your Lordships will do me that justice which my Jury, through want of attention, did not.

Mr. Attorney General. My Lord, if I understand the effect of this motion, it is, that the matter of the information, as charged, does not state a crime. That indeed is the necessary form of the objection to be made in this stage of the business; for, in this stage of the business, every thing is to be taken to be solemnly true which that information has stated as essential to the constitution of the crime, and which the Jury consequently have found. Now, my Lord, it is said that nothing is to be assumed but what appears upon the record; and that the information wants some averments. I was very attentive to collect, if I possibly could, what species of averment it was that the information was supposed to want. But I missed it, if it has been stated on the part of the defendant.—What kind of averment inserted in this information would have supplied it, and have made it a perfect description of the crime? I shall take up the information itself to shew, in the course of the argument, that there is enough stated in it to make the crime. The information does not end,

*Should it not likewise
have been averred,
that I knowing &c.
scienter, I think, would
be material. Sed 2.*

as is supposed on the part of the defendant, merely in these words,—that he had “written and published and caused and procured to be written and published *according to the tenor and effect following*.” The information states expressly that he had “written and published a certain false, wicked, malicious, scandalous, and seditious libel of and concerning his Majesty’s government and the employment of his troops, according to the tenor and effect following.” So that the matter found by the Jury, and upon which your Lordship is either to pronounce judgment, or to say that, stated so upon the record, it amounts to no crime in estimation of law, is; that he did write that false, wicked, malicious, scandalous, and seditious libel of and concerning the King’s government and the employment of his troops.

I own I expected that he would have gone farther, and that he would have endeavoured to prove that such words as are included under the *tenor and effect following*, delivered in writing to be printed and published, *concerning the King’s government and concerning the employment of his troops* were, in themselves, so manifestly innocent, that it was necessary for a court of justice, upon this record, to say that, notwithstanding the Jury has found a libel published according to the tenor and effect following, yet there is, in truth, no LIBEL.

Your Lordship will observe what it is that he had said concerning the King’s government and concerning the employment of his troops;—that “our beloved American fellow-subjects, faithful to the character of Englishmen, preferring death to slavery, were, for that reason only, inhumanly murdered by the King’s troops, at or near Lexington and Concord in the province of Massachusetts Bay in New England, on the 19th of last April.” This therefore is what he has said concerning the government and concerning the employment of the troops;—that they were to commit murder upon the King’s subjects, only because they were, something better than innocent,—*meritorious*, in being faithful to the character of Englishmen, and in preferring death to slavery. If it be possible to state that these words (uttered and applied, in the manner in which this record applies them, to the public government of the country and the employment of the troops) are innocent words; then the argument might have taken some foundation. But to say that there is any want of averment in this—till I hear what averment could have made this charge more plain, more distinct, as a charge of murder upon the King’s subjects, against the employment of the troops, against a national exertion of public force; it cannot, in my mind, by words be made more strict and plain than it now stands upon the record.

The effect of these words I industriously avoid to speak of now: the degree of favour that belongs to them will be the subject of farther discussion: the only question that is at present before the Court, is simply this;—whether the libel, as stated in the record, does or does not contain sufficient matter of slander.

(R E P L Y .)

Mr. Horne. I should be very happy, my Lords, at all times to pay to Mr. Attorney General all those compliments which are personally and officially due to him; and I would rather have risked the chance of exposing myself, than not to pay to him the compliment of a reply; if indeed I could have found in his answer any thing to which even the appearance of a reply could be given. However I will do for him what I can.

Mr. Attorney General has said, that he could not discover from any thing which I had advanced, what omitted averments were suggested by me to be necessary to the information. My Lords, though Mr. Attorney General may have missed them, your Lordships I am sure did hear me very plainly and distinctly, and though I did not formally say, such and such averments are necessary to the information; yet when I told your Lordships that in the reply of the Attorney General, and in the address of the Judge to the Jury, I then heard, for the first time, that there was a rebellion in Massachusetts Bay, and that certain persons were employed to quell that rebellion; your Lordships I am sure and the whole Court very well understood that those were the averments which were necessary to the information; and, my Lords, it was not out of any satirical inclination that I imputed the omission of those averments to carelessness,

ness, I had other reasons. For indeed I know very well (and upon reflection I dare say your Lordships will know very well) why those averments were omitted. My Lords, the truth is, that Mr. Attorney General found himself between Scylla and Charybdis. If he inserted these averments, he split on one side, on the proof. My Lords, the advantages are very numerous and great which I should have derived from those averments. The information would have been destroyed for want of proving what was averred; therefore he did not chuse to aver them. By the nature of his answer to me, I am persuaded he was aware of it: and, from certain intelligence, I know that there was a consultation on the drawing up of the information against me: it was proposed to alter the information; but having obtained verdicts upon the other informations, it was, upon consultation, agreed by the learned gentlemen, the King's counsel, that the information against me should be literally the same. I know it from certain information, which I obtained without the least treachery in my informants; for the gentlemen who caused me to know it, had not, in what they said, the least notion that they were telling me any thing.

My Lords, before I heard Mr. Attorney General's answer, I was a little apprehensive that I might meet with some difficulties: I was sure I ran no hazard in the principle of my objection. I thought indeed that I might perhaps be puzzled in the application of it, by cases of law, or by precedents that I had never before heard of. Now, my Lords, though Mr. Attorney General has not favoured me with any, and though I cannot myself give you an adjudged case; yet your Lordships will forgive me, unused to these matters, if I read to you the opinion of a learned Judge in a matter exactly similar to this. It is in the case of Lord Russell. The opinion I mean is that of Mr. Justice Atkins. His words are remarkably fortunate for me; and it being that kind of law obvious to persons who pretend to understand no more than what common sense will direct them to; I did happen to have read that book long ago. I beg leave to read some little of it, because it literally applies. He takes notice of that part of the indictment where it is averred against Lord Russell, that he was at a consultation for the purpose of seizing the King's guards. He says, "guards" [there is no difference between guards and troops,—except indeed that troops is a much wider word than guards.—Troops! we say a troop of strolling players.]

"The guards—what guards? what, or whom does the law understand or allow to be the King's guards, for the preservation of his person? Whom shall the court that tried this noble Lord, whom shall the Judges of the law that were then present, and upon their oaths, whom shall they judge or legally understand by these guards? They never read of them in all their law-books. There is not any statute law that makes the least mention of any guards. The law of England takes no notice of any such guards; and therefore the indictment is uncertain and void."—He says, the love of his subjects is next under God the best guard of kings. He says,—"The very Judges that tried this noble Lord were the King's guards, and the kingdom's guards, and this Lord Russell's guard against all erroneous and imperfect indictments, from all false evidence and proof"—(What immediately follows does not indeed apply in my case)—"from all strains of wit and oratory"—(there has been none here, my Lords)—"misapplied and abused by counsel. It had been fit for the Court that tried this noble Lord on this indictment, to have satisfied themselves from the King's counsel, what was meant by these guards. —But admit the seizing and destroying of those who are now called the King's Life-guard, had been the guard intended within this *overt Fact*," or OPEN DEED, (these, my Lords, are the averments which are similar to those that I propose—these are the averments which Mr. Attorney General enquired after). "Yet (he says) the indictment should have set forth that *de facto* the King had chosen a certain number of men to attend upon and guard his person, and set forth where they did attend, as at Whitehall, or the Meuse, or the Savoy, &c. and that these were the guards intended by the indictment, to be seized and destroyed; that by this setting forth, the Court might have taken notice judicially, what and who were meant: but to seize and destroy the King's guards, and not shew who, and what is meant, makes the indictment very insufficient."

My Lords, Mr. Attorney General (I beg the Court's pardon, I shall take up very little of their time) the Attorney General says, he expected I should have said that the matter contained in the information is no libel.—I should perhaps have said

so,

so, if *libel* had been such a technical term that I could have known what it meant; and, if it was such a definite and technical term, then perhaps my objection would not have all that weight with you which I now believe it will.—The sending of a wooden gun was adjudged by this Court to be a libel: there are many other things that might be adjudged libels; it is impossible for me to say what *libel* means; it is not a technical term; and perhaps if it had been, the Attorney General would not have had quite so much difficulty to make this information good: but not being a technical term, it makes those other averments the more necessary.

Mr. Attorney General has then tried to help the deficiency of the averments in the information by, *of and concerning*,—"of and concerning his Majesty's government and the employment of his troops."—I believe there is no crime comprehended in *of and concerning*; for it may be of and concerning good, as well as bad. The word, *concerning*, means, looking at together; and that is the only, and the single meaning of the word, *concerning*.

Now, my Lords, if Mr. Attorney General should succeed in this his prayer, he will be a very fortunate though not a very reasonable gentleman.

My Lords, a proof of all those matters which should have been averred (which I am founded in laying by the opinion of the Judge, who pressed them upon the Jury as motives for their verdict, and which I firmly believe he would not have done if he had not believed that they were contained in the information) a proof, my Lords, of all those circumstances was supplied for the Attorney General by the Judge on the trial; for he produced no evidence of them himself: and he will be very fortunate indeed if he can now prevail upon the Court to supply likewise the deficiencies in the information.

Lord Mansfield. Whatever the degree of guilt may be, how strongly soever it may have been proved, or whatever observations may have arisen in this case; yet if the defendant has a legal advantage from a LITERAL FLAW, God forbid that he should not have the benefit of it. It is most certain that at the trial the information was considered to be words spoke of and concerning the King's government and his employment of his troops; that is, the employment of the troops by government. Upon that ground the defendant called a witness, Mr. Gould. The Attorney General rose to object to him; but it was very clear that he was a proper witness; and he acquiesced immediately; because it was *extremely material* to shew what the subject matter was to which the libel related. If it was the employment of the troops under proper authority that came within the charge in the information.—Had it been a lawless fray (which I believe I said at the trial) had it been a lawless fray, it would not; though the saying so might have been a libel of the individuals; yet it would not have been this libel: it would not have been this libel of the King's troops employed by him. Now at first, and at present, it seems to me that, "of and concerning the King's government and the employment of his troops," pins it down. But I doubt a little upon it; there is some weight in the objection, whether in the form of drawing there should not have been inuendos. In common reason and understanding it is charged; but whether technically charged or not, I do not know; and therefore as to this point without prejudice we will take some time to consider of it; to see whether precedents can be found which require this technical scrupulosity over and above that certainty which is sufficient to every reader: and we will go on with the rest, *de bene esse*; as we could not pronounce judgment upon it now, and will consider of it till he comes up again, if we find sufficient to satisfy us to over-rule the objection.

x what resh?

[Lord Mansfield then read his notes of the evidence given upon the trial as follows.]

Lord Mansfield. This is an information filed by the Attorney General against John Horne; and it was for publishing the advertisements that have been read from the information.

Thomas Wilson proved the advertisements in question, the manuscripts, to be the hand of Horne; and Henry Sampson Woodfall, he published the advertisements, he swears that the defendant gave him a paper the 7th of June, to publish in his own and send to the other papers; and that the defendant paid the fees: then he produced

two advertisements to publish. The defendant cross-examined him, and he assented to the question of the cross-examination, by saying by your desire I inserted these advertisements; and published them as your act and deed: you never desired to be screened; but you desired to be given up: you said, they should not want full evidence. William Woodfall proved likewise a paper given him by the defendant to be inserted in The London Packet, and Morning Chronicle; which were the advertisements in the record. Therefore upon the fact of printing and publishing there is no doubt at all.

The defendant called a witness to prove that really and in truth there was a subscription, and that the money was actually raised; and he likewise called William Lacey, who proved that 100l. was paid to him, and by him remitted to Dr. Franklin: that was 100l. and no more. And then the defendant called Thoroton Gould, and he said, that at Lexington, on the 19th of April 1775, he was a subaltern officer, he was ordered there by the Adjutant of General Gage, *the commander in chief of his Majesty's troops, and governor of the province*: and he, together with the other troops, set out, and between two and three in the morning he was taken prisoner: that he heard the provincials charged our troops;—we found them armed;—we supposed they were marching to attack us, from a continual firing of alarm cannon, early in the morning, as soon as we began to march; notice or alarm guns are to raise the country. Upon this evidence the Jury found him guilty.

Lord Mansfield. Mr. Attorney General, have you any thing to say.

Mr. Attorney General. Mr. Horne I suppose will say what he can in extenuation.

Lord Mansfield. Mr. Attorney General, have you any thing to say?

Mr. Attorney General. It belongs to the defendant I apprehend to state what he can to the Court in his extenuation.

Mr. Horne. I shall state nothing in extenuation till your Lordships decision has told me that there was a crime. I do not know where the crime lies at present: my objection goes that there is no crime in the information; it is impossible for me to extenuate that which I do not acknowledge.

Lord Mansfield. Have you no affidavits of circumstances, or any thing?

Mr. Horne. None in the world.

Lord Mansfield. Let him be committed.

Mr. Horne. Will your Lordship commit me before it appears whether I am even accused of any crime?

Lord Mansfield. No, then you may come up on Monday—you came voluntarily now?

Mr. Horne. I did.

Lord Mansfield. Then come up voluntarily again—If you should find any precedents on either side, I wish you would give them to us.

[This recommendation to bring precedents was repeated to the Attorney General and to the Defendant, two or three times.

To which Mr. Horne replied, that he was not himself very likely to produce precedents.]

KING'S BENCH, Monday, Nov. 24, 1777:

LORD MANSFIELD.

I reading my notes the other day in the case of *The King and Horne*, I overlooked the reference to a written piece of evidence that was given by him at the trial, and I am told I did not state it; and therefore I will state it now.

He produced to Captain Gould the Public Advertiser of the 31st of May 1775, which purported to be the copy of an affidavit made by Captain Gould, while he was a prisoner in the custody of the *Rebels* at Medford, and printed in that paper: and he asked him whether the contents were truly printed. I told him, that if he meant to prove the facts to be true as above, it could not be proved by affidavit, the man being present; and even if he was absent, they could not be proved by affidavit: but that if he meant to shew that, at that time, there existed a public account of it in the paper, that might be of use to restrain or qualify the meaning of the paper that was in question by the information: *he said, he desired it to be read in that light*; and in that light it was read, and is as follows;

"I Edward Thoroton Gould, of his Majesty's own regiment of foot, being of lawful age, do testify and declare, that on the evening of the 18th instant, under the orders of General Gage, I embarked with the light infantry and grenadiers of the line, commanded by Colonel Smith, and landed on the marshes of Cambridge, from whence we proceeded to Lexington: on our arrival at that place we saw a body of provincial troops armed, to the number of about 60 or 70 men. On our approach they dispersed, and soon after firing began; but which party fired first I cannot exactly say, as our troops rushed on shouting and huzzaing previous to the firing, which was continued by our troops so long as any of the provincials were to be seen: from thence we marched to Concord. On a hill near the entrance of the town we saw another body of the provincials assembled; the light infantry companies were ordered up the hill to disperse them; on our approach they retreated towards Concord; the grenadiers continued the road under the hill towards the town; six companies of light infantry were ordered down to take possession of the bridge, which the provincials retreated over; the company I commanded was one; three companies of the above detachment went forward about two miles, in the mean time the provincial troops returned to the number of about three or four hundred; we drew up on the Concord side of the bridge; the provincials came down upon us, upon which we engaged and gave the first fire, this was the first engagement after the one at Lexington; a continued firing from both parties lasted through the whole day; I myself was wounded at the attack of the bridge, and am now treated with the greatest humanity, and taken all possible care of by the provincials at Medford.

Signed EDWARD THOROTON GOULD."

There was a motion made the other day in arrest of judgment, and many objections, I understood, that were taken to shew that the charge, as it stands upon this record, is insufficient in law to support any judgment: that there was no averment as to the state of the Massachusetts colony at that time; either that there were riots, insurrections, or rebellions; that there were no averments that the King had sent any troops: that there was no averment that there was any skirmish or engagement; or how it began; or the nature of it; how it began, or how it went on, or ended: and that it was not averred that the employment of the troops was by the King's authority. The only objection that had colour in it was, what I mentioned last;—that the employment of the troops was not averred to be by the King's authority. I thought then, and said, that the averment of the words being written "of and concerning the King's government,"—was an answer; but no precedent was cited or alluded to on either side. I fancy the Attorney General was surprized with the objection: but there was no precedent; and I could not say upon my memory

Riots, no part of my Objection.

N.B. So that whether Rebels or not; yet if slain by troops employed by the King, must not charge it to be murder.

"Lowfield vers. Bancroft & al."
 "Judgment ar-
 rested, because
 Libel not laid
 to be de et con-
 cerning the
 Plaintiff."
 "After verdict for the Plaintiff in an action for a Libel, the judgment
 was arrested, because it was not laid that the Libel was of or
 concerning the Plaintiff, and Cro. Jac. 126. was cited."
 "Strange pro quer." *Strange's Reports 2 Vol. Page 934.*

[8]

A maxim of law, something
 better than a precedent.

Break Mr. Just. Ashurst,
 is this clearly true?

See this case, and judge
 how applicable it is.

See the case.
 A precious consequence
 this!

What then would it be, to
 say that King's troops had
 been defeated?

How does this agree with
 his own doctrine delivered
 to jury on the trial?

We are not now talking of
 the duty of the jury.

The counsel were not called
 upon to pry; nor did any
 of them think of looking
 for a flaw. But if they
 had, and missed it, what
 a precious conclusion is
 this!

*
 Dominus Rex vers. Dominam Lawley.
 She moved in arrest of judgment after conviction on an Information
 for attempting to persuade a witness not to appear and give evidence
 against Jasper Brooke for forgery. And the exception taken was, that
 it was not positively averred, that Brooke was indicted; it was only said
 "that she sciens that Brooke had been indicted, and was to be tried,"
 did so &c. &c. it is held in all criminal cases the fact must be posi-
 tively alleged. *5 C. 8. 750. 6 Mod. 30. 4 Co. 44. b.*
2 Children v. A. & B. 11 And. 2. 2 Bull. 295. 1 Rol. Rep. 70.
 But the counsel for the defendant, who considered that it was enough well enough
 from the fact of the indictment, and the fact of the indictment, and the fact of the indictment,
 where the pit of the indictment was not proved, and the fact of the indictment was not proved.

memory whether precedents might not require some technical form of expression as to
 that medium through which words are averred to be written of the King's govern-
 ment; and if any flaw had happened formally, technically, or verbally, that were
 not at all founded in the sense or reason of the thing, I should in this case be of the
 same opinion that I was in the case of an outlawry; that the defendant ought to
 have the benefit of it: and therefore I desired that we might think of it for some
 time that precedents might be searched, and the books looked into. We have fully
 considered of it, and the precedents have been looked into, and we have fully con-
 sidered the information, and all the objections that were mentioned, and all the
 objections that we could think of, and we are all clearly of opinion, without any
 doubt, that the information is sufficient. An indictment or information must charge
 what in law constitutes the crime, with such certainty as must be proved: but that
 certainty may arise from necessary inference; in the manner settled in the case of *The*
King and Lawley in Strange: plain words in a libel speak for themselves; if they
 are doubtful, their meaning must be ascertained by an innuendo: here the words are
 plain; they want no innuendo: they are averred to be written "of and concerning
 the King's government and the employment of his troops." The obvious mean-
 ing is, that the employment of the King's troops must be under his authority; and it neces-
 sarily is so if the words also relate to and are written of and concerning the King's
 government. This must now be taken to be true; because the verdict finds it. Had
 the question arose upon a demurrer, it must equally have been taken to be true.
 The gist of every charge of every libel consists in the person or matter of and concerning
 whom or which the words are averred to be said or written. In *The King against*
Alderton the information was held bad; because it was not laid in the information,
 it was not laid that the libel was of or concerning the justices of Suffolk. Where the
 words are averred to be written of the King's government where—(there are several
 precedents)—or of the government of the kingdom, or of the government, suppose,
 of the navy; as to any thing further as to which they are also written, through the
 medium of which they calumniate the King's government, there is no form of expression
 technically necessary; and it cannot be; because there may be cases where the King's
 government might be calumniated through an imputation upon the gross licentiousness
 of his troops. The question to be tried is whether the words laid are written of the
 King's government. It may vary the degree of mischief, guilt, or malice; but it is
 totally immaterial as to the constitution of the crime upon the record, whether the
 words refer to something that has existed or are an entire fiction. Had *Lexington*
 been left out; or had any other place been mentioned, where there had been no skir-
 mishes, or engagements, instead of *Lexington*; it would without any innuendo have
 been equally a libel. It is the duty of the jury, to construe plain words and clear
 allusions to matters of universal notoriety, according to their obvious meaning; and
 as every body else who reads must understand them. But the defendant may give
 evidence to shew that, in the case in question, they were used in a different, or in a
 qualified sense. If no such evidence is given, the obvious meaning to every man's
 understanding must be decisive. Before this trial five several juries had found those
 words, from their necessary meaning, to be of and concerning the King's govern-
 ment. Here, in this case, the defendant gave evidence: and the evidence he gave
 demonstrated that the words related to troops acting under the King's authority; and
 consequently related to the King's government. And I am the more confirmed that
 upon this occasion there is little colour of doubt of any flaw in the information, that
 in those five trials that I allude to, in one or other of them, a great variety of counsel
 of learning, eminence, and ability were employed, they were called upon to pry with
 all the sharpness that they had into the information; to pick a hole in it: there were
 three judgments given upon conviction upon them: and no counsel saw or imagined
 there was any flaw in it. THEREFORE we are all satisfied that the information
 is sufficient.
 Mr. Attorney General. The defendant has been convicted on the oaths of twelve
 of his countrymen with having written, printed, and published, and caused to be
 written, printed, and published, a certain false, wicked, malicious, scandalous, and
 seditious libel of and concerning the King's government and the employment of his
 troops; asserting that the national force of this country has been employed in the
 murder

murder of the King's subjects, for as meritorious an attribute as can be imputed to man: and he has specified the time and place at which that was done.

The charge, as contained in the information, rests within a narrow compass. I might have stated perhaps and proved a different crime to have arisen upon it; but I did state that which, according to my judgment, was a crime of such quality, was a crime of such heinousness, and of such a size, as fairly called for the highest resentment which any Court of justice has thought proper to use with respect to crimes of this denomination. My Lord, although the crime, upon the state of it in the information, rests within the compass which I have now mentioned; yet, as it now comes before the Court, the matter that now requires the consideration of justice does not lie within that narrow compass. The defendant himself has thought it important to the situation which he wishes to hold with a certain body of men in this country, not to leave it just in the place in which the information does: he has thought it essential to his views (which I don't enter into particularly what they are) but he has thought it essential to his views, to prove how much he meant by writing in that manner to the public; and also to prove how much he meant and how directly, how pointedly, and how confidently, to insult the public justice of the country, by not only committing as high a crime as could be committed within the description of misdemeanor against the public authority and welfare, but by stating himself to have committed that crime with a view of insulting the public justice of the country. My Lord, if it had been essential to us to prove, that that crime, and that that case which is specified in the indictment, was the subject of a murder committed under public authority by the national forces of the country; he has himself thought proper to state and to prove by his witnesses, that he meant the attack made by the King's troops upon a body of Rebels. Your Lordship has taken notice of the addition of this affidavit that was introduced into the cause: the effect of that evidence was to prove, that which was but too well-known before, namely that, in the time there specified, the 19th of April 1775, the Rebels had arrayed themselves in arms; had formed magazines; had taken stations in the country in which they had placed themselves; were ready to surround the forces of the King, as far as their abilities could do it, upon any motion to be made by these forces: that upon the instant, very early in the morning, (and whether accidentally or otherwise let that be decided by the witnesses) the King's troops, marching in perfect silence; that, upon the instant of that happening, the first demonstrations that were made upon the part of the Rebels was the firing alarm guns; understood exceedingly well by the witnesses, and exceedingly well explained by him; it proved that he understood them perfectly, namely, by the Rebel troops instantly surrounding them. I state that to have been industriously proved on the part of the defendant, in order to mark that he meant to fly at the very highest subject, and to offend in the most heinous manner in which it was possible for him to contrive to offend.

My Lord, he did not think it enough to have proved that such was the intention of the paper with which he was at that time charged; but he also thought it incumbent upon him to produce witnesses to prove another part of the contents of that paper; namely, that he had attended a solemn meeting; at which meeting he, with certain other persons there assembled, had contributed money to the amount of about 100l. and that the purpose for which they contributed it, was the comfort and relief of those whose merits with them was stated to consist in no other particular than the circumstance of their relation to those Rebels that stood in arms against the King's forces: he brought witnesses to prove the fact. That the money was actually paid is not the thing that I pin upon; let it be doubted whether the 50l. came actually to the hands of the banker; or that the money was afterwards applied to any of the purposes that are there stated. To be sure there was not proof alleged upon that subject. Whether it is to go to those people, or whether it is to go to any other purposes similar to those, in the intention of those who subscribed the money; (that is, the insulting and affronting government and the King) is a matter of very little consequence to the point I am now speaking to. He was at the pains to prove that they went through that business that I am stating to your Lordship, in order to afford comfort and relief to those who stood in that species of relation to Rebels: which, as far as it goes, is to excite the Rebellion, by offering that degree of encouragement to those who shall happen to perish in such a flagitious offence:

"Dane plagam mortalem; warrantizandoverdidit; receiving stolen goods
"knowing them to be stolen; are all as loose. So is the case of keeping a dog
"knowing him to be accustomed to bite sheep. And there is no impeachment
"because if there was no such indictment proved at the trial, the defendant
"must have been acquitted. Vide 1 Sid. 183. 337. 2 Sid. 127. Salk. 686.
"2 Lev. 208. 5 Co. 120. 2 Roll. Abrid. 82. pl. 4. 212. Dyke's 2. Appendix
"at the end of the State Trials, to. where it is said that the defendant satis
"fied Sir Thomas Armstrong to have assigned the death of the King, and to
"have fled for the same. The defendant nevertheless voluntarily remitted
"money to him for his support. Indiscreet and Regardless of the
"was fined three hundred marks and suffered one month's imprisonment.
"Strange's Reports. Vol. 2. Page 224. etc.

offence: as far as it goes it amounts to that. The libel therefore that now stands before your Lordship, which the occasions of the defendant of a different sort (which I shall have occasion to speak more particularly to presently) obliged him to aggravate, obliged him to go to the extent that I have now stated; is such a one that I believe it will be totally impossible for the imagination of any man, however shrewd, to state a libel more scandalous and base in the fact imputed, more malignant and hostile to the country in which the libeller was born, more dangerous in the example, if it were suffered to pass unpunished, than this which I have now stated to your Lordship.

Your Lordships have seen that the libel is such that it is impossible by any epithets to aggravate it. I depend entirely upon the state which I refer to: which your Lordship has delivered to the Court: I depend upon that for the most emphatical description of every circumstance that tends to create criminality, which is possible to be alledged not only against this, but against any other libeller whatsoever.

My Lord, such was the nature of the libel. The next question that I meant to trouble your Lordship upon, is the conduct of the present defendant in the article of publishing the libel; and, subsequently to that publication, in the article of avowing it, holding it up, maintaining it to the world, thrusting it in the face of justice, and proclaiming—*sic honor et nomen divinis vatibus*. It is a language addressed to the lowest and most miserable mortals: there is no man of any value in point of understanding in this country, that does not know that the information contained in it is false, absurd, impossible, even below the worth of refutation; but it is addressed to the lowest of the mob and to the bulk of the people; who it is fit should be otherwise taught, who it is fit should be otherwise governed in this country. My Lord, the occasions of this reverend gentleman to keep up the opinion of a particular part of the factions in this country, his private occasions obliged him to be very distinct and very anxious to explain it. On the part of the prosecutor it was enough to prove that he had published the libel: the evidence for the prosecutor went plainly and distinctly to that fact. We produced the original paper under his hand; we produced the man to whom it was delivered, Woodfall, in order to publish it in a paper which he printed himself, called *The Public Advertiser*. We proceeded to prove that the occasion of delivering it to him, and the office in which he was employed, was not merely to publish it in that paper; but to carry it round to all the other public papers, and to make the dispersion of it as universal as he possibly could. Here therefore we did establish upon him, by these plain facts, a publication of as universal a sort as it was possible for him to obtain.

One would have thought that these facts so stated had constituted crime enough; but it is not enough to be criminal with this man; but he must be criminal in a way that may shew himself able to defy justice; in a way to convey to the people, who believe in those foolish representations, that they actually do trample upon justice. I believe a great multitude of those gentlemen called authors, Mr. Woodfall's contractors, are men in fact who are just capable of writing in an impudent style; the single, simple merits of an impudent style is, I suppose, qualification enough to prevent any material distinction between his whole rabble of authors. If there is any distinction at all, it must arise from the superior confidence of those who cannot only write in that style, but stand forth in the face of the justice of the country, and say—"punish me if you dare."—These men lose their credit, these men lose their opportunities with their own faction; if, when called upon for their crimes, they don't preserve the same impudence. That made it necessary for the present defendant not to be satisfied with what the prosecutor had proved upon him; but to undertake a proof of his own; to put him upon still higher ground with his connections. By the examination of Woodfall he has undertaken to prove that the method of his transactions with him had been, at all times, that he should at all times, for his own sake, if called upon, give him up to justice. A good decent sort of contract, that long way back, between a divine of the church of England and his printer! that he should print for him upon the terms of the said divine being ready to be given up to justice, at all times when he should be called upon! My Lord, the first instance of the execution of that contract was upon a *polemical subject of divinity*, between this gentleman and one of his *parishioners*, Sir John Gibbons. Mr. Woodfall did not state to the Court which part was taken by which: I cannot possibly tell how the controversy ended: but in an

extra

extract upon the *subject of religion*, for the *edification* of the *parish*, it was necessary that there should this contract intervene, that the reverend author should be ready to stand forth, in case the printer was called upon. But with regard to the present publication, this was to be much more emphatical: he had been called upon in another place: he was afraid that he had not been thought by his friends to be confident enough in maintaining what he was charged with: and that, if he escaped, it was upon some doubt, whether the guilt was proved upon him or not: upon which he called upon this Woodfall to depose, that, in the manner of delivering him that paper, it was done with an industrious and affected solemnity. The words of it were, "—did I, or did I not, formally before the witness, when called in, deliver that paper as my act and deed; as if it had been a bond?"—And, in the latter end of the evidence,—“if they now chuse to take notice of this advertisement.”—It was to that purpose; for this reason, that “in the last transaction before the House of Commons it was pretended they let me off because they could not get full evidence. “Do you remember I said, that if they now chose to take notice of this advertisement they should not want full evidence?”—Now, my Lord, to be sure what had passed between this author and this printer, (whether it was more or less in confidence) would have made it of no consequence whatever to the public: it would have been impossible for us to have known it; or, if it had, to have adduced it in evidence: that would have been of no consequence whatever to the public. It never could have attained to the public knowledge, excepting that interest I have so often alluded to, that interest of recommending himself to his patrons and defying public justice.

I don't state the offence to have consisted in the conversation that was held between him and the printer; but I state the offence to arise in his anxiety to proclaim to the public, that such is the manner in which he dares to insult the justice of the country. There arises the aggravation of the crime, in the manner in which I have stated.

With regard to the rest, the strange conduct of the defendant—I don't know whether that is properly before the Court, any more than his misrepresentation of the proceedings of the Court; which I shall urge for no earthly purpose but this; in order to demonstrate that the aim and object of publishing so very infamous a libel as this, went even beyond the libel itself; to endeavour, if he could, to make a paradeful triumph over justice: that I take it is the aim and object of the whole.

I have done my duty with regard to the charge that is now before the Court. With regard to the punishment also it is my province and my duty to speak.

All other crimes of specific denomination are followed by the letter of the law with peculiar punishments: and they are held forth, by that punishment and by that denomination, to the people in the true point of view in which it is the interest of the public that they should be seen. The law by enacting particular punishment upon specific crimes has stated to the public that degree of terror to arise from the example of punishment; which in wisdom, it is hoped, will be sufficient to restrain offenders from committing the same crimes. My Lord, that is not so in the case of a misdemeanor; which, in its variety and consequences may involve crimes of a different nature and complexion, and of very different degrees of guilt. Concerning those crimes the public neither has a right nor can possibly be informed in any other manner than by the judgment of this Court. My Lord, this Court in pronouncing judgment upon this offence is to do by this species of offence, with regard to the rest of the public, and to the purpose of deterring crimes, what the law does when it specifies particular punishments. Your Lordships are in these cases to supply the deficiencies of the law, and to shew to those who have been desirous to offend the laws of their country, by the example of its punishment, in what sort of estimation this degree of guilt is held by the law: and I, whatever I have thought upon the subject, shall be obliged to confess, that if the punishment is less than the *old* deliberate judgment has gone to and rested upon, that I have been mistaken in the nature of the crime. All my apology for the mistake must consist simply in this single circumstance; that, lying so near to high treason, it was very difficult for my imagination and judgment to draw the line between them: that must be my apology, if I have mistaken the nature and quality of this crime.

My Lord, the punishments to be inflicted upon misdemeanors of this sort, have usually been of three different kinds; fine, corporal punishment by imprisonment, and infamy by the judgment of the pillory. With regard to the fine, it is impossible for justice to
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make this sort of punishment, however the infamy will, always fall upon the offender; because it is well known, that men who have more wealth, who have better and more respectful situations and reputations to be watchful over, employ men in desperate situations both of circumstances and characters, in order to do that which serves their party purposes; and when the punishment comes to be inflicted, this Court must have regard to the apparent situation and circumstances of the man employed, that is, of the man convicted, with regard to the punishment.

With regard to imprisonment, that is a species of punishment not to be considered alike in all cases, but varies with the person who is to be the object of it: and so varies with the person, that it would be proper for the judgment of the Court to state circumstances which will make the imprisonment fall lighter or heavier, as the truth is, upon the person presented to the Court. I say, my Lord, that would be proper, if I had not been spared all trouble upon that account by hearing it solemnly avowed in your Lordship's presence, by the defendant himself, that imprisonment was no kind of inconvenience to him: for that certain employments, which he did not state, would occasion his confinement in so close a way, that it was mere matter of circumstance whether it happened in one place or another: and that the longest imprisonment which this Court could inflict for punishment was not beyond the reach of accommodation which those occasions rendered necessary to him. In this respect therefore imprisonment is not only as with respect to the person not an *adequate* punishment to the offence; but the public are told, and told by a pamphlet which bears the reverend gentleman's name (may be his name may have been forged to it; but by a pamphlet that bears that name) that it will be *no* punishment. And your Lordships (according to the usual style with which he has affected to treat justice from the beginning to the end) are told that you cannot punish him in that way: and therefore, if that is a species of punishment which cannot affect him, as your Lordship has been before told in a manner to be relied upon; he has made it manifest that your Lordships judgment in that part of the punishment, operates nothing with respect to him personally; and consequently that it will lose its whole force and efficacy as with respect to that example which the public justice ought to hold out to the world.

I stated in the third place to your Lordships, the pillory to have been the usual punishment for this species of offence. I apprehend it to have been so in this case for above two hundred years before the time when prosecutions grew rank in the Star-chamber, and to those degrees which made that Court properly to be abolished. The punishment of the pillory was inflicted, not only during the time that such prosecutions were rank in the Star-chamber; but it also continued to be inflicted upon this sort of crime, and that by the best authority, after the time of the abolishing the Star-chamber, after the time of the Revolution, and while my Lord Chief Justice Holt sat in this Court. In looking over precedents for the sake of *the other question*, I observed that Mr. Tutchin (an author of some eminence in his day) was angry with Holt, the Lord Chief Justice, for transferring, as he called it, the punishment of bakers to authors. That was upon a personal conceit which such an author as Tutchin thought himself entitled to entertain of the superior dignity of that character all along. He thought that the falsifying of weights and measures was a more mechanical employment than the forging of lies: and that it was less gentleman-like to rob men of their money, than of their good name. But that is a peculiarity which belongs to the little vanity that inspires an author. I trust therefore, when I speak of Lord Chief Justice Holt, and of the time in which he lived, I speak (for all, but particularly for this) of as great an authority as ever sat in judgment upon any case whatever: his name was held high during his life, and has been held in reverence in all subsequent times. He deserved *popularity*; by doing that which was right upon great, trying, and important occasions. He obtained *popularity*, because he despised all other means of aiming at it, but that of doing right upon all occasions. From the temper of those times, from the vehemence and designs of that faction that opposed him, Sir John Holt would have been reviled; if the revilers of that day had not observed in the greatness of his spirit and character, that it was impossible to reach him: and he has preserved a name which was highly honoured during his life, and which will live as long as the English constitution lives. Citing him therefore, in support

support of this as a proper punishment to be inflicted upon this sort of offence, is giving, in my apprehension, the greatest authority for it.

My Lord, in pronouncing an opinion upon the objections started by the Defendant, I would desire no better, no more pointed, nor no more applicable argument than what that great Chief Justice used when it was contended before him that an abuse upon government upon the administration of several parts of government, amounted to nothing, because there was no abuse upon any particular man: that great Chief Justice said they amounted to much more: they are an abuse upon all men. Government cannot exist if the Law cannot restrain that sort of abuse. Government cannot exist unless when offences of this magnitude, and of this complexion, are presented to a Court of justice, the full punishment is inflicted which the most approved times have given to offences of much less denomination than these, of much less. I am sure it cannot be shewn that in any one of the cases that were punished in that manner, the aggravation of any one of those offences were any degree adequate to those which are presented to your Lordship now. If offences were so punished then, which are not so punished now, they lose that explanation which the wisdom of those ages thought proper to hold out to the public, as a restraint from such offences being committed again. It was my duty also to consider this as with a view to the public conviction.

I am to judge of crimes in order to the prosecution: your Lordship is to judge of them ultimately for punishment. I should have been extremely sorry if I had been induced by any consideration whatever to have brought a crime of the magnitude which this was (of the magnitude which this was when I first stated it) into a Court of justice; if I had not had it in my contemplation also that it would meet with an adequate restraint; which I never thought would be done without affixing to it the judgment of the pillory. I should have been very sorry to have brought this man here, after all the aggravations that he has super-induced upon the offence itself; if I had not been persuaded that those aggravations would have induced the judgment of the pillory. The punishment however to be inflicted for this crime rests finally with your Lordship. If the Court is of opinion that that judgment is not to be pronounced, it will be my humble duty to submit with the most perfect acquiescence. I have no interest in the business, but as the officer of the public. I am nothing near so good a judge of the interest which the public have in the business, as your Lordships sitting in this Court, but which I am stating a matter to the Court for judgment, I must state it as I feel it; and I feel it so. And if it were my province to do more than to state it so, I should still continue to think of it as I do at present.

Mr. Horne. My Lords, though your Lordships judgment is to be pronounced upon myself, I shall attend to hear it with the indifference and curiosity of a traveller; which I was early instructed to do in such circumstances as these, long before I could imagine I should ever be in them. My Lords, I am a little the more at a loss to address your Lordships, because (and I am not ashamed to be laughed at for my disappointment) I acknowledge that I came this morning into the Court in the full assurance, that I should find less difficulty to go out of it than I did to come in. My Lords, I had no notion at all that evidence could supply the defects of the information; or that it would be attempted to be so supplied by evidence. I did not, it is true, at the time I objected to the deficiencies of the information, I did not, amongst other things, add evidence. I believe I am time enough now to move any thing in arrest of judgment; and, if I am, I desire that your Lordships would understand me now to object to the supplying of the defects of an information by any evidence whatever. My Lord, I apprehended that your Lordship had directed Mr. Attorney General and myself (and I ought, if what he has said of me be any thing like truth, to beg his pardon for coupling my unworthy name with his) but, my Lord, I thought that he and I were directed, if we could, to produce precedents. I own to your Lordship, I did not well understand the direction when I received it; because I had laid before you a sacred principle, with which I was much better acquainted than with precedents; and for one of which I would willingly give up all the precedents that ever existed.

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The Judges then, in Mr. Att. General's opinion, have, by omitting Pillory in their sentence, committed a much greater crime than I have; for they have committed a crime, which makes it impossible for Government to exist.

The Judgment was not to follow the crime charged and found by Jury; but something else called 20 aggravations to be found by the Judges without a Jury. and Note, the 20 = gravations may be something greater and more criminal than the original charge. If this may be the case, what does it signify when the Jury finds!

My Lords, I shall no doubt be very irregular in the order of what I shall say to your Lordships; and I should not have said a word, if there were not in Mr. Attorney General's harangue some things that might easily stir a man to anger, if he was not as little susceptible of it as I am. My Lords, I feel not the least anger at any thing that has passed. The gentleman on the trial had stripped me of common sense; but he allowed me a *sort* of understanding. My Lords, he shifted his ground in his reply. He first, out of kindness and compliment to me, supposed what I had written to be beneath common sense: My Lords, he afterwards found it proper to make it beyond common sense: at first I was a fool; at last I was a madman. My Lords, at first he thought it—(I forget his expression) but he thought it candor (I think he said) to the names of persons alluded to, though distantly, to suppose that what I had written was false; to save others from some scandal of imprudence or impropriety, he thought it candor to impute falsehood to me. My Lords, when that was proved to be true, he only said, that it did not mend the matter: indeed whichever side of the case I took, nothing could mend the matter.

It is not my business, my Lord, to take the smallest notice of what fell from your Lordship; nor shall I mention a number of things, which I might justly be permitted to mention, of wilful and gross misrepresentations of the evidence upon the trial: I should not have mentioned it at all; but Mr. Attorney General has hinted, though not specified, misrepresentations by me of the proceedings of the trial.

My Lords, he has endeavoured to alarm me with monstrous fines, with long imprisonment, with infamous punishment. My Lords, infamy is as little acquainted with my name as with that gentleman's or with your Lordship's. I feel no apprehensions from the pillory. I do feel some little pain that a gentleman, taking advantage of my situation, should say and offer those things, unfounded in appearances even of truth, against me, which neither he nor any man like him dare to insinuate in any other station but this.

He has attempted likewise to insinuate, my Lords, a species of robbery; when he did so he was guilty of falsehood. He said, that my witness did not prove that the oil was paid into the bankers. My Lords, he literally proved it.

My Lords, he represents me as speaking the language of — “if you dare to punish me” — and he says it is a language addressed to the lowest of the mob. Indeed I think so too: but it is his own language, not mine.

My Lords, he has dwelt upon my occasions, my desperate situation, my want of character and fortune. My Lords, it is my misfortune that from my cradle I have had as effeminate an education and care and course of life as Mr. Attorney General. It is my misfortune that there was not a greater want of fortune: and as for my occasions, my means have always been beyond them. I should rather, my Lords, if I was speaking in extenuation or to mitigate your punishment, I should rather close in with Mr. Attorney General and acknowledge myself that desperate, helpless wretch that he has represented me: perhaps it would be the most effectual motive to your Lordships compassion. My Lords, I never in my life solicited a favour; I never desire to meet with compassion.

My Lords, he has talked to your Lordships of my patrons. I have had in my life, and very early in my life, the greatest of patrons; aye! with all their power, greater than any that now hear me. My Lords, I renounced my patrons, because I would not renounce my principles: repeatedly, over and over again, of different descriptions, and in different situations. My Lords, I am proud, because I am insulted; or else I certainly should not have held any of this language.

My Lords, Mr. Attorney General through a blameful carelessness has told you a story of a theological, polemical dispute between myself and a parishioner. I can easily conceive that he let himself fall into that mistake for the sake of drawing a smile from your Lordships and the Court upon the *reverend* gentleman: but in this, like the rest, my Lords, there is not a syllable, not the smallest foundation of truth. I never had a theological, polemical dispute. My Lords, I am free to acknowledge that no theological disputes that ever I read, and I have endeavoured to read all that ever happened, none of them ever interested me in the manner that the present disputes

putes do interest me. My Lords, I never was made to be a martyr. I have opinions of my own; but I never intended to suffer for them at the stake.

My Lords, he has endeavoured to insinuate that all that I wrote, and all that I said, was for the sake of a paradeul triumph over justice: and he has talked again and again of the mob. My Lords, the mob have conferred no greater favours upon me than upon Mr. Attorney General. I have been repeatedly followed by very numerous mobs in order to destroy me, single and alone, for a great length of way; not once, or twice, or three times, but four and five times; two or three thousand at my heels. I am sensible of the ridicule of the situation, even whilst I mention it. These are the only favours that I have ever received from the mob: these are the only favours that I have ever solicited; and I protest to your Lordships I had much rather hear the mob hiss than holloa: for the latter would give me the head-ach, the first gives me no pain. My Lord, I have heard of those who have expressed more wishes for popularity than ever I felt: I have heard it said, and I think it was in this Court, that they "would have popularity: but it should be that popularity which follows, not that which is sought after." My Lords, I am proud enough to despise them both: if popularity would offer itself to me, I would speedily take care to kick it away.

My Lords, as for ambition, and bodies of men, and parties, and societies; there is nothing of it in the case. There is no body of men with whom I can think, that I know of. There is no body of men with whom I am connected. There is no man or men from whom I expect help, or assistance, or friendship, of any kind, beyond that which my principles or services may deserve from them individually. Private friendships I have, like other men; but they are very few: however that is recompensed to me, for they are very worthy.

My Lords, Mr. Attorney General has said, that I represented imprisonment as no kind of inconvenience to me. As no kind of inconvenience, my Lords, will not certainly be true: because the great luxury of my life is a very small but a very clean cottage; and though imprisonment will be so far inconvenient to me; the cause of it will make it not painful.

My Lords, I find that not only I have a *sort* of understanding very different from that of Mr. Attorney General; but my notions of law, and my notions of humanity are equally different. My Lords, between the time that I had last the honour of appearing before you and the present time, it happens very unfortunately for Mr. Attorney General that he has proved, that not only my notions of law and decency, but my notions of propriety and humanity are widely different from his: and I mention it, my Lords, because it goes immediately to the doctrine now attempted to be established. Mr. Attorney General has heard a person, as great as himself, between that time and this, justify the legality, the propriety, the humanity of the tomahawk and the scalping knife. Between the last time I appeared here and this time, these have been the sort of *King's troops* justified, by a high officer of the law, to be employed, as legal, proper, mild, and humane.

My Lords, Mr. Attorney General has said, that I declared upon the trial that I had a certain employment which made it *necessary* for me to be confined as long as your Lordships should or would confine me. That is not true. My Lords, I did say that I had an employment, had something to do, that would confine me to my room longer than your Lordships would confine me: I believe I said more; I neither intended when I said it to affront you, nor will attempt at this time to appease you; I said longer than your Lordships *dare* to confine me; those were the words: and I said it, because I did believe and do still believe that your Lordships dare not wilfully do injustice. My Lords, as for that certain employment, I did not say it was *necessary*. It is an employment of amusement merely; an employment that I meant to make public; but not for the sake of gain or praise. My Lords, when first I began my life, I was encouraged to worthy and to virtuous actions by the temptation of praise: I have long since learned, my Lords, to be able to do those actions which I think virtuous in despite of shame.

My Lords, Mr. Attorney General has done what I have before heard attempted to be done with very great sorrow: he has attempted to reinstate the Star-chamber. The fault he finds with it is only its *rankness*,—"before the prosecutions grew so rank in the Star-chamber, and which *rankness* caused it to be abolished."—I don't recollect

recollect the words of that act by which it was abolished; but I am sure that its rankness alone is not the reason given. If the gentleman would lend me his memory, I should then repeat that, none of the powers nor none like them (your Lordships know better the words, I don't recollect the words) but nothing like them was ever to be put in use again in that or in any other Court:—as well as I can remember.

Mr. Attorney General has talked of the personal conceit of Tutchin concerning authors. I thought myself, till a strong zeal made me act otherwise, as little likely to become an author as any of those gentlemen who hear me. I have never been a contractor with any news-papers; he knows I have not. If I desired the printer of the Public Advertiser to give me up always to justice, my Lords, I cannot easily conceive how Mr. Attorney General could find any thing to justify his oratory upon that subject. Is that a defiance of a Court of justice? Is that flying in the face of the justice of the country? To be willing to abide its sentence; not to withdraw myself from its censure; not to wish even to avoid any enquiry into my conduct; is that to be that bold-faced audacious man that defies the justice of his country? My Lords, if it is, I can only again deplore that a gentleman, who must have great understanding and great talents and abilities, from the office which he holds, that the understanding of that gentleman should be so very different from mine.

My Lords, I have already appeared in this situation often enough; and if I had, as he imagines I have, any luxury or pleasure in holding myself forth in public; if I had, it would long before this have been satisfied.—There are many other things which I might say to your Lordships; but as I trust, and fully trust, that I shall still find a remedy, my Lords, against the present decision; I shall forbear saying one syllable in extenuation of what the Attorney General has been pleased to charge me with; and leave your Lordships to pronounce your judgment without the least consideration of me, without the smallest desire that you should abate a hair from what you think necessary for the justice of my country. I shall leave it entirely to your Lordships discretion.

Mr. Justice Aston. John Horne, clerk, you stand convicted, upon an information filed against you by his Majesty's Attorney General, of writing and publishing, and causing to be printed and published, a false, wicked, and seditious libel of and concerning his Majesty's government and the employment of his troops. The libel has been openly read in Court from the record; and, upon the report of his Lordship who tried this information, it appears that, upon your own cross-examination of one of the witnesses, you gloried in the publication of it; that you avowed you did not desire to be screened; and that you avowed yourself the author of it. Since that indeed, in this Court, you attempted to gloss over parts of this libel, and to confine its tendency to a possible private charge upon the King's troops, and not concerning his Majesty's government; to treat that word to be indeterminate in its signification, and not to carry with it the construction which the information avows, and which the Jury have found, of its concerning the King's government and the employment of those troops by his authority. You have said very truly that evidence is not to supply any defect in an information. There is no defect in the information, the information sets forth the libel at large; and the information charges that libel to be of and concerning his Majesty's government, as I before-mentioned. Upon that the Court has now decided agreeable to the finding of the Jury; and no man can really mistake the malicious meaning and insinuation of it. It is a libel which contains a most audacious insult upon his Majesty's administration and government and the conduct of his loyal troops employed in America. It treats those *disaffected* and *traiterous* persons who have been *in arms and in open rebellion* against his Majesty, as faithful subjects—faithful to the character of Englishmen: and it falsely and seditiously asserts, that for that reason only they were inhumanly murdered by his Majesty's troops at Lexington and Concord. By this same libel subscriptions too are proposed and promoted for the families of those very *Rebels* who *fell in that cause*, traiterously fighting against the troops of their lawful sovereign. This is the light in which this libel must appear to every man of a sound and impartial understanding; this is the plain and the unartificial sense of it. The contents of this libel have been too effectually scattered and dispersed by your means, as charged in the several counts of the information, and they have been inserted in divers and different news-papers; the contents

tents are too well known, and I trust abhorr'd, to need any repetition from me, for the sake of observing farther upon their malice, sedition, and falsehood. The Court have considered of the punishment fit to be inflicted upon you for this offence: and the sentence of the Court is,——That you do pay a fine to the King of 200l. that you be imprisoned for the space of twelve months, and until that fine be paid; and that upon the determination of your imprisonment, you do find sureties for your good behaviour for three years, yourself in 400l. and two sureties in 200l. each.

Mr. Horne. My Lord, I am not at all aware of what is meant by finding sureties for the good behaviour for three years: it is that part of the sentence that perhaps I shall find most difficulty to comply with; because I don't understand it. If I am not irregular in entreating your Lordship to explain it to me;——Your Lordships, I suppose, would chuse to have your sentences plainly understood, and I know not the nature of this suretyship.

Lord Mansfield. It is a common addition.

Mr. Horne. And it may be a common hardship.

Mr. Justice Aston. Not to repeat offences of this sort.

Mr. Horne. Of this sort?

Lord Mansfield. Any Misdemeanour.

Mr. Justice Aston. Whatever shall be construed bad behaviour.

Mr. Horne. If your Lordships would imprison me for these three years, I should be safer; because I can't foresee, but that the most meritorious action of my life may be construed to be of the same nature.

Lord Mansfield. You must be tried by a Jury, by your country, and be convicted. You know it is a most constant addition. You know that yourself very well. Where are the tipstaves?

F I N I S.

ERRATA IN THE TRIAL.

- Page 5, Line 43, *after Special, insert Jury.*
- Page 5, Line 48, *for John Brant, read James Brant.*
- Page 10, Line 20, *for quoting Laws, read quoting Law.*
- Page 10, Line 37, *for directions, read direction.*
- Page 19, Line 57, *for wickedness of this sort of prosecution, read wickedness of the powers claimed in this sort of prosecution.*
- Page 20, Line 3, *for it will be corrected, read and well corrected.*
- Page 25, Line 12, *for the very man, read the very men.*
- Page 28, Line 35, *for have, read has.*
- Page 30, Line 10, *before expelled, insert be.*
- Page 32, Line 58, *for Printer, read Printers.*
- Page 35, Line 16, *for threatening, read threatens.*
- Page 36, Line 5, *for called, read caused.*
- Page 37, Line 12, *for comes, read come.*
- Page 38, Line 1, *for advertisements, read advertisement.*
- Page 40, Line 22, *for inserted it in such manner, read inserted in it such matter.*
- Page 40, Line 60, *for Peerefs, read Peers.*
- Page 42, Line 31, *for it is not high enough, read if it is not high enough.*
- Page 42, Line 48, *for not delay you, read not now delay you.*
- Page 51, Line 6, *for So, Gentlemen, read So that, Gentlemen.*
- Page 52, Line 16, *for is it true, read it is true.*
- Page 61, Line 57, *for circumstances, read circumstance.*

P. 24. L. 44

for taken, read taking.

for taken, read taking